

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1955

Introduced by Assembly Member De La Torre

February 17, 2010

An act to amend Section 1099 of the Government Code, ~~and to add Section 33207 to the Health and Safety Code~~, relating to public officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1955, as amended, De La Torre. Public officers: incompatible offices.

~~(1) Existing~~

Existing law prohibits a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, from simultaneously holding 2 incompatible public offices, as specified.

This bill would provide ~~additional circumstances~~ *examples of situations* when 2 public offices are incompatible, *and specify when a member holds an office that may exercise powers over another office, as provided.*

~~(2) The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities in order to address the effects of blight in those communities. A legislative body that declares a need for an agency may either appoint members of the agency or declare itself to be the agency.~~

~~This bill would provide that the members of a legislative body who simultaneously serve on an agency and the legislative body that has declared itself to be the agency shall not be deemed to be holding incompatible offices.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1099 of the Government Code is amended*
2 *to read:*

3 1099. (a) A public officer, including, but not limited to, an
4 appointed or elected member of a governmental board, commission,
5 committee, or other body, shall not simultaneously hold two public
6 offices that are incompatible. Offices are incompatible when any
7 of the following circumstances are present, unless simultaneous
8 holding of the particular offices is compelled or expressly
9 authorized by law:

10 (1) Either of the offices may audit, overrule, remove members
11 of, dismiss employees of, or exercise supervisory powers over the
12 other office or body.

13 (2) Based on the powers and jurisdiction of the offices, there
14 is a possibility of a significant clash of duties or loyalties between
15 the offices.

16 (3) Public policy considerations make it improper for one person
17 to hold both offices.

18 ***(b) Examples of situations in which public offices are***
19 ***incompatible under subdivision (a) include, but are not limited to,***
20 ***the following:***

21 ***(1) An office has the power of eminent domain over property***
22 ***that is under the geographic jurisdiction of the other office.***

23 ***(2) An office has the power to set a fee or a rate or to impose a***
24 ***tax or a levy that may directly or indirectly affect the other office.***

25 ***(b)***

26 ***(c) When two public offices are incompatible, a public officer***
27 ***shall be deemed to have forfeited the first office upon acceding to***
28 ***the second. This provision is enforceable pursuant to Section 803***
29 ***of the Code of Civil Procedure.***

30 ***(e)***

1 (d) This section does not apply to a position of employment,
2 including a civil service position.

3 ~~(d)~~

4 (e) This section shall not apply to a governmental body that has
5 only advisory powers.

6 ~~(e)~~

7 (f) For purposes of paragraph (1) of subdivision (a), a member
8 of a multimember body holds an office that may audit, overrule,
9 remove members of, dismiss employees of, or exercise supervisory
10 powers over another office when the body has any of these powers
11 over the other office or over a multimember body that includes
12 that other office.

13 (g) *For purposes of subdivisions (a) and (b), a member of a*
14 *multimember body holds an office that may exercise powers over*
15 *another office when the body has power over the other office or*
16 *over a multimember body that includes the other office.*

17 ~~(f)~~

18 (h) This section codifies the common law rule prohibiting an
19 individual from holding incompatible public offices.

20 ~~SECTION 1. Section 1099 of the Government Code is amended~~
21 ~~to read:~~

22 ~~1099. (a) A public officer, including, but not limited to, an~~
23 ~~appointed or elected member of a governmental board, commission,~~
24 ~~committee, or other body, shall not simultaneously hold two public~~
25 ~~offices that are incompatible. Offices are incompatible when any~~
26 ~~of the following circumstances are present, unless simultaneous~~
27 ~~holding of the particular offices is compelled or expressly~~
28 ~~authorized by law:~~

29 ~~(1) Either of the offices may audit, overrule, remove members~~
30 ~~of, dismiss employees of, or exercise supervisory powers over the~~
31 ~~other office or body.~~

32 ~~(2) Based on the powers and jurisdiction of the offices, there~~
33 ~~is a possibility of a significant clash of duties or loyalties between~~
34 ~~the offices.~~

35 ~~(3) Public policy considerations make it improper for one person~~
36 ~~to hold both offices.~~

37 ~~(4) Both public entities in which the offices exist have the power~~
38 ~~of eminent domain in an area in which the geographic jurisdictions~~
39 ~~of each office or body overlap.~~

~~(5) Either public entity in which an office exists has the power to set a fee or a rate or to impose a tax or a levy that may directly or indirectly affect the other office or body.~~

~~(6) Either public entity in which an office exists has the authority to investigate, monitor, or sue the other office or body.~~

~~(b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.~~

~~(c) This section does not apply to a position of employment, including a civil service position.~~

~~(d) This section shall not apply to a governmental body that has only advisory powers.~~

~~(e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.~~

~~(f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.~~

~~SEC. 2. Section 33207 is added to the Health and Safety Code, to read:~~

~~33207. The members of a legislative body who simultaneously serve on the agency for which the legislative body has declared itself to be the agency pursuant to Section 33220 shall not be deemed to be holding incompatible offices for purposes of Section 1099 of the Government Code.~~